

\$~

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ MAT.APP.(F.C.) 46/2016 & CM Nos.13066-67/2016

%

Date of decision : 8th April, 2016

ANIRUDH MISHRA

..... Appellant

Through: Mr. Anil Kr. Pruthi, Adv.
with appellant

versus

INDU MISHRA

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

Judgment (Oral)

Gita Mittal, J

1. The appellant has assailed the order dated 26th February, 2016 passed by the Family Court, Rohini Courts, North-West granting the application under Section 24 of the Hindu Marriage Act, 1955 filed by the respondent-wife seeking interim maintenance. The parties to the instant case were married on 14th February, 2013 and there is no issue from the wedlock. It was urged that the respondent was unemployed. The petition under Section 13(1)(ia) of the HMA was filed by the appellant-husband in August, 2014. The application under Section 24 of the Hindu Marriage Act came to be filed on 27th October, 2014 inter alia on

the allegations that the respondent-wife had no source of income and that the appellant-husband was giving tuitions and earning more than ₹1 lakh per month. The respondent had claimed maintenance @ ₹40,000/- per month and litigation expenses to the tune of ₹50,000/-. The appellant had disputed the respondent's claim of his income and claimed that he was only earning sum of about ₹10,000/- from tuitions. He had admitted that he was owning a Swift car which he has claimed to have purchased on loan from Axis Bank; one Saving Bank Account; one mobile phone; a telephone and one HP Laptop (purchased on loan from Bajaj Allianz Ltd.). On a consideration of the materials placed before the court, the learned Trial Judge was compelled to deduce the earnings of the appellant from his expenditure. For expediency, we extract hereunder the analysis of the learned Judge so far as the income and expenditure of the appellant is concerned :-

“15. The non-applicant, during the course of hearing admitted that at the time of marriage with the applicant/respondent he was working with couple of coaching institute and imparting tuitions in Chemistry subject. He further submitted that presently he was taking private tuitions and not associated with any coaching institute. HE has not placed on record any documentary evidence regarding his income when he was associated with coaching institutes. However, a study of his bank account statement for the period February, 2013 onwards indicates that cash deposits of sums in the range of 20,000/- to 50,000/- were made at

irregularly intervals. Therefore correct assessment of his income can not be made. However, a study of his expenditure pattern indicates that he has been paying EMI for repayment of car loan @ Rs.6334/- per month. During the period of May, 2013 to June, 2014 he has withdrawn on an average roughly Rs.30,000/- each month by way of ATM or by debit card shopping. Though, the amount ranges from couple of thousands to Rs.60,000/-. This court has of course ignored withdrawals in the month of February, March 2013 and July, 2014, when the withdrawal was in the range of Rs.90,000/- each month. An assessment can thus be made that during the period of parties living together i.e. February, 2013 to August 2014, petitioner had withdrawn on an average amount of Rs.30,000/- per month towards his expenditure. Assuming that a newly married couple also had some cash in hand for expenditure; this court is of the opinion that petitioner and respondent together were spending at least Rs.30,000/- per month on themselves. It is settled law that applicant is entitled to enjoy similar lifestyle which she enjoyed in the matrimonial home. This court is thus of the opinion that applicant is entitled to maintenance @ Rs.15,000/- per month, which is half of the expenditure which petitioner and respondent were spending during the period of their matrimony. It is further admitted by Ld. Counsel for applicant that she has remained gainfully employed with NDMC, Palika Kendra, New Delhi, during the month of June, 2015 to December 2015 on contract basis with salary Rs.20,347/- per month.

Photocopy of her appointment letter has been filed during the hearing. This court is of the opinion that during the period applicant/respondent has remained employed, she is not entitled to maintenance from petitioner-non-applicant.”

2. It was contended before the Family Court that the respondent was gainfully employed with the NDMC, Palika Kendra, New Delhi. An office order dated 12th June, 2015 was placed before the learned Trial Judge in this regard. The same employment order has been asserted to submit that the respondent is gainfully employed. This office order dated 12th June, 2015 clearly states that the respondent was employed on contractual basis for the period of six months with effect from 6th April, 2015 at a salary of ₹20,347/-. While passing the impugned order, the learned Trial Judge has clearly directed that the appellant would not be entitled to maintenance for this period as June, 2015 to December, 2015 as well as *“further period when she remains in employment and earned more than @ Rs.15,000/- per month”*.

3. There is no other document evidencing that the respondent was gainfully employed or is gainfully employed for any other period. The orders passed by the learned Family Judge carefully protect all rights of the appellant so far as an unwarranted claim of maintenance is concerned for periods when the respondent may be employed.

4. It is urged that the respondent-wife has made exaggerated claims in as much as in her affidavit filed before the Metropolitan Magistrate in the Domestic Violence case, she had claimed that she was spending ₹25,000/- per month on groceries whereas in her petition before the Family Court under Section 24 of the Hindu Marriage Act, she has claimed that her grocery expenses were only ₹5,000/- per month. Further, in her affidavit filed before the Metropolitan Magistrate in the Domestic Violence case, she had claimed that her total expenditure was to the tune of ₹40,000-45,000/- per month whereas in her income affidavit filed before the Family Court in the Section 24 application, she has stated her total monthly expenditure to be only ₹13,250/-.

We find that the learned Family Judge has carefully considered all expenses and directed that the non-applicant was entitled to ₹15,000/- as maintenance and ₹11,000/- as litigation expenses on a careful assessment of her expenses and the income of the appellant.

5. It is also to be noted that the order is an interim order subject to final orders which may be passed on the maintenance aspect upon the parties leading evidence in any other proceedings, if filed. In this regard, the appellant has pointed out that the respondent-wife has filed proceedings under the Protection of Women from Domestic Violence Act, 2005. Nothing herein contained will be considered as an expression of opinion on the merits of the rival contentions in these proceedings which would abide by the final orders on evidence led by both parties. The respondent has been

awarded litigation expenses of ₹11,000/- which in the facts of the case are also reasonable.

6. We find that the appellant has been permitted to clear arrears in six equal monthly instalments which is also reasonable. Learned counsel for the appellant contends that the capacity to earn of the respondent-wife has not been taken into consideration. We are not persuaded by this argument of learned counsel for the appellant. There can be many reasons for the wife who has not sought work. Deprivation of maintenance undoubtedly would do great dis-service to such spouse.

We, therefore, find no merit in this appeal which is hereby dismissed.

CM Nos. 13066-67/2016

7. In view of the dismissal of the appeal, these applications do not survive for adjudication and are disposed of as such.

GITA MITTAL, J

I.S.MEHTA, J

APRIL 08, 2016/kr